



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of telephone conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on June 19, 2017 requesting an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to keep the Tenant's security and pet damage deposits, and to recover the filing fee from the Tenant.

Preliminary Issues

An agent for the Landlord appeared for the scheduled hearing at 1:30 p.m. However, due to a time conflict, I was unable to call into the hearing at 1:30 p.m. Therefore, I requested the telephone conference call log for the scheduled hearing which shows the Landlord appeared for ten minutes but there was no appearance for the Tenant during that time.

Rule 7.3 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states if a party or their agent fails to attend the hearing, the Arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the Application, with or without leave to re-apply. As there was no appearance by the Tenant for the 1:30 p.m. scheduled hearing, and the Landlord appeared and was ready to proceed, I allowed the hearing to reconvene at 3:35 p.m. The hearing heard the undisputed evidence of the Landlord's agent as follows.

The Landlord's agent testified that a copy of the Application and the Hearing Package, which contained the Landlord's documentary evidence, was served to the Tenant by registered mail to the rental unit address on June 23, 2017. The Landlord's agent testified that the documents were returned to her as unclaimed on July 18, 2017.

The Landlord provided the Canada Post tracking number into evidence to verify this method of service. Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service by failure or neglect to pick up mail. Therefore, based on the undisputed evidence before me, I find the Tenant is deemed to have received the documents for this hearing on June 28, 2017 pursuant to Section 89(1) (c) of the Act.

The Landlord testified that she had provided documentary evidence for this file by fax to the Residential Tenancy Branch and she had received confirmation the documents had been received. However, that evidence was not before me. I accepted the Landlord's testimony that this evidence had been served to the Tenant. Therefore, pursuant to Rule 3.19 of the Rules, I allowed the Landlord to submit a copy of that evidence to me within one hour after the conclusion of the hearing.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order for unpaid rent and late rent fees?
3. Is the Landlord entitled to retain the Tenant's security and pet damage deposits in partial satisfaction of the monetary claim?

Background and Evidence

The Landlord's agent testified that this tenancy started on October 1, 2005. The monthly rent payable was \$680.00 on the first day of each month which was then increased during the tenancy through a number of notices of rent increase. The current rent payable is \$892.00 per month.

At the start of the tenancy the Tenant paid a security deposit of \$340.00 and a pet damage deposit of \$340.00, both of which are herein referred to as the Deposits. The signed tenancy agreement also provides a clause that the Landlord may charge a late fee for rent of \$25.00 each.

The Landlord's agent testified that the Tenant paid rent late from November 2016 onwards. By the time it got to May 1, 2017, the Tenant was in rental arrears of \$1,101.00. As a result, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") dated May 10, 2017 by attaching it to the rental unit door on the same day. The Landlord provided a Proof of Service document which was signed by a witness to verify this method of service

The Landlord's agent testified that on May 16, 2017 the Tenant paid \$900.00 towards the arrears. This left a balance outstanding of \$201.00. However, the Tenant then failed to pay rent for June 2017 but paid \$750.00 on June 26, 2017, leaving an outstanding balance of \$343.00. The Tenant then failed to pay rent on July 1, 2017 but paid \$800.00 on July 5, 2017 leaving rental arrears of \$435.00. The Landlord's agent testified that the Tenant has not paid any rent for August 2017 at the time of this hearing. Therefore, the Landlord's agent requested a total of \$1,327.00 in rental arrears which has accumulated at the time of this hearing.

The Landlord's agent testified that for each of the payments made by the Tenant after the Notice was served to the Tenant, the Landlord accepted them "for use and occupancy only" and stated the payment did not reinstate the tenancy on the receipts issued to the Tenant.

The Landlord now seeks to end the tenancy for unpaid rent and claims an outstanding balance of \$1,327.00 in rental arrears. The Landlord also claims a total of \$175.00 for seven months of rent where the Tenant paid rent late for the following months: January, March, April, May, June, July and August 2017.

In support of the Landlord's position the Landlord provided a copy of the: the tenancy agreement; the Tenant's ledger reflecting all of the charges, including late fees, and payments since November 2016; the 10 Day Notice; and the Proof of Service documents for the 10 Day Notice.

Analysis

Section 26(1) of Act requires a tenant to pay rent when due in accordance with their tenancy agreement whether or not the landlord complies with the Act. Section 46(1) of the Act allows a landlord to end the tenancy by issuing the Tenant with a 10 Day Notice.

Sections 46(4) and (5) of the Act states that within five days of a tenant receiving a 10 Day Notice, a tenant must: pay the overdue rent in order to render it of no effect; or make an Application to dispute it. If the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and they must vacate the rental unit on the vacancy date on the 10 Day Notice.

I find the contents of the 10 Day Notice on the approved form comply with the requirements of Section 52 of the Act.

I accept the evidence before me that the Landlord posted the 10 Day Notice on May 10, 2017 pursuant to Section 88(g) of the Act. As the 10 Day Notice was posted, I find that in accordance with Section 90(c) of the Act, it is deemed to be received by the Tenant three days later, namely on May 13, 2017.

I further find that the vacancy date of the 10 Day Notice is automatically corrected to be effective on May 23, 2017 pursuant to Section 53 of the Act, which is the date the tenancy ended.

I am also satisfied the Landlord did not reinstate the tenancy because the Landlord clearly communicated that subsequent rent payments by the Tenant after the 10 Day Notice was served, were accepted for "use and occupancy only" and did not reinstate the tenancy.

As the effective vacancy date on this tenancy has now passed and the Tenant is occupying the rental unit in rental arrears, I find the Landlord is entitled to an Order of Possession which is effective two days after service on the Tenant. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate voluntarily.

With respect to the Landlord's monetary claim for unpaid rent, Section 64(3) (c) of the Act allows an Application to be amended. In addition, Rule 4.2 of the Rules states:

"In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served."

[Reproduced as written]

Based on the foregoing, I amended the Landlord's Application to consider her monetary claim for rental arrears and late fees accumulated since the serving of the 10 Day Notice, as the Tenant would have been aware that these amounts were unpaid and owing to the Landlord. I accept the undisputed evidence that the Tenant is in rental arrears for this tenancy in the amount of **\$1,327.00** and award this amount to the Landlord.

Section 7(1) (d) of the *Residential Tenancy Regulation* allows a landlord to charge an administration fee up to \$25.00 for late payment of rent if the tenancy agreement provides for this fee.

The Landlord provided a copy of the tenancy agreement which provides for this fee. I accept the undisputed evidence that the Tenant has failed to pay rent on time for seven months of this tenancy. Therefore, I find the Landlord is also entitled to the **\$175.00** claimed for late fees.

As the Landlord has been successful in this matter, the Landlords are also entitled to recover the **\$100.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$1,602.00 (\$1,327.00 + \$175.00 + \$100.00).

As the Landlord has been holding the Tenant's \$680.00 Deposits in trust since October 1, 2005, interest is payable on this amount. Using the Deposit Interest Rate calculator on the Residential Tenancy Branch website, the interest payable at the time of making this Decision is calculated at \$24.08 for a total amount of **\$704.08** in Deposits.

Pursuant to Section 72(2) (b) of the Act, I order the Landlord to retain this amount in partial satisfaction of the claim awarded. As a result, the Landlord is granted a Monetary Order for the remaining balance of **\$897.92** (\$1,602.00 - \$704.08).

This order must be served on the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

Copies of the above orders for service and enforcement are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Conclusion

The Tenant failed to pay rent and late fees. As a result, the Landlord is granted an Order of Possession effective two days after service on the Tenant.

The Landlord is allowed to keep the Tenant's security deposit, plus accrued interest, and is issued with a Monetary Order for the remaining balance of \$897.92.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 04, 2017

Residential Tenancy Branch